

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES HALL,	§
	§ No. 334, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0801023358
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 20, 2010
Decided: August 16, 2010

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 16th day of August 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, James Hall, filed an appeal from the Superior Court's May 12, 2010 order denying his second motion for sentence modification pursuant to Superior Court Criminal Rule 35.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

¹ Hall's first motion was denied on August 6, 2008.

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.² We agree and affirm.

(2) On April 29, 2008, Hall, with the assistance of counsel, pleaded guilty to Felony Theft, Criminal Mischief, 3 counts of Misdemeanor Theft, and Burglary in the Third Degree---6 of 25 criminal charges against him. He was sentenced as a habitual offender to a total of 6 years of Level V incarceration, to be suspended after 3 years for decreasing levels of supervision. The sentencing order provided that the amount of restitution to be paid by Hall was to be submitted by the Department of Justice within 60 days. On June 25, 2008, Hall's sentence was amended to provide for restitution to 66 victims, in the amount of \$49,688.24.³

(3) In this appeal, Hall claims that he was never notified of the amendment to the sentencing order and never had an opportunity to offer any objection to the restitution claims.

(4) Under Rule 35(b), a timely motion for sentence modification must be filed within 90 days of the imposition of sentence.⁴ In the absence of any showing of extraordinary circumstances, Hall's motion was clearly

² Supr. Ct. R. 25(a).

³ The sentencing order subsequently was corrected on July 28, 2008 to note that 2 of Hall's sentences were TIS rather than non-TIS, as was reflected on the original sentencing order.

⁴ *Defoe v. State*, 750 A.2d 1200, 1202 (Del. 2000). In this case, a timely motion had to be filed within 90 days of June 25, 2008.

untimely. Moreover, under Rule 35(b), the Superior Court is not required to consider repetitive requests for sentence modification. Here, Hall previously filed an unsuccessful motion for sentence modification after the sentencing order was amended, rendering his current motion repetitive. Finally, the record before us reflects that counsel for Hall was provided a copy of the amended sentencing order and offered no objection to it. As such, we conclude that the Superior Court properly denied Hall's motion for sentence modification.

(5) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice